

The United States' use of Harsh Interrogation Practices

EWS Contemporary Issues Paper

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February 20, 2009

Conference Group 6

Major Cobham

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 20 FEB 2009		2. REPORT TYPE		3. DATES COVERED 00-00-2009 to 00-00-2009	
4. TITLE AND SUBTITLE The United States' use of Harsh Interrogation Practices				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) United States Marine Corps,Command and Staff College, Marine Corps Combat Development,Marine Corps University, 2076 Main St.,Quantico,VA,22134				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT See Report					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 13	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Since 9/11, American policy has been ambiguous regarding standards for gathering military intelligence in the context of interrogation techniques. American policy makers and the general public have disputed the use of aggressive interrogation methods for military intelligence. Public concern has heightened awareness of abuse by U.S. personnel at Abu Ghraib Prison and Guantanamo Bay and has led many to question the legality of such interrogations. The legislative, executive and judicial branches of government have debated whether interrogation practices comply with U.S. statutes and treaties such as the U.N. Convention Against Torture (CAT) and the 1949 Geneva Conventions. Despite these statutes, each intelligence agency and DOD organization seem to employ different standards for conducting interrogations. Given the disparity in any clear uniform American policy, adversaries of the United States, have challenged and attacked these methods.

Moreover, enemies of the United States, such as Al Qaeda, have focused on the inconsistencies in U.S. detainee handling procedures to launch an effective information operation (IO) campaign. Terrorists groups disseminate propaganda that the United States sanctions cruel and unusual methods of torture against prisoners of war. The negative IO message coupled with domestic debate over the treatment of war prisoners have caused America's moral integrity to be questioned on the world stage.

An inter-agency standard for tactics, techniques, and procedures must be established to ensure consistent compliance and to restore the image of the United States.

BACKGROUND

The collection of military intelligence from captured soldiers has always been an intrinsic part of warfare. To paraphrase Jennifer K. Elsea, a prominent legislative attorney, prisoners of war (POWs) generally have some knowledge of military operations and, therefore, expect that POWs will be interrogated by their captors. To prevent belligerents from using cruel and unusual methods to extract information from captives, nations came into agreement with one another regarding the limits of interrogation techniques.¹ The Geneva Convention Relative to the Treatment of Prisoners of War (GPW) Article 17, paragraph 4, provides the general rule for interrogation of prisoners of war: "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."² The Geneva Convention goes on to allow provisions for detained

¹ Jennifer K. Elsea. "Lawfulness of Interrogation Techniques under the Geneva Conventions," CRS Report for Congress RL32567 (Washington, DC: Congressional Research Service, Library of Congress, 8 Sep 2004), CRS-1.

² Elsea. "Lawfulness." CRS-2

civilians. The Geneva Conventions, Article 42, states that the detainment of civilians by an interned or occupying power is acceptable if "security requirements make such a course absolutely necessary."³ Article 5 allows for the detention of civilians who pose a clear and present threat and/or immediate danger to the occupying power:

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention. In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention.⁴

The United States also adheres to the United Nations Convention Against Torture (CAT). This treaty defines the standard definition of torture and prevents nations from using "severe pain or suffering, whether physical or mental...for such purposes as obtaining from him or a third person information or a confession."⁵

Considering the United States adheres to both the Geneva Convention and CAT treaty, both of which explain how a POW is to be treated, an ongoing debate rages over the treatment of detainees. Jennifer Elsea explains that according to the Army Field Manual, FM 34-52, "the Geneva and Hague Conventions and

³ Elsea. "Lawfulness." CRS-6

⁴ Elsea. "Lawfulness." CRS-6

⁵ Elsea. "Lawfulness." CRS-9

the UCMJ set definite limits on the measures which can be used to gain the willing cooperation of prisoners of war." It does not, however, elaborate on what the "definite limits" are, or the extent to which they apply to persons who are not prisoners of war. ⁶

CURRENT STANDARDS AND TACTICS, TECHNIQUES AND PROCEDURES

The language of the numerous human rights treaties is difficult to understand. Therefore, implementation of these guidelines is largely a subjective call by the interrogator. Moreover, each country adheres to its own standards and customs on the interpretation of these guidelines.

Despite these laws, statutes and guidelines, the Geneva Convention clearly defines the rights of lawful POWs, yet the language is ambiguous over the rights of "unlawful" combatants taken into custody. The Department of Defense (DOD), with consultation from civilian policy makers, has analyzed the binding treaties of the U.S. and has produced very rigid guidelines that govern the interrogation of detainees. The Marine Corps has its standards, limits, and methods of interrogation clearly laid out in field manual FMFM 3-22-2. The Army uses an almost identical field manual (FM 34-52), which has formed the basis for all DOD interrogation methods and

⁶ Elsea. "Lawfulness." CRS-23

procedures. FMFM 3-22-2 states, "The use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind is prohibited by law and is neither authorized nor condoned by the U.S. Government."⁷ In the FMFM 3-22-2, no delineation is made between lawful and unlawful combatants as it applies to interrogations methods. Therefore, military interrogators are subject to a consistent set of rules and methods when questioning a detainee, despite the prisoner's legal category.

DOD interrogators are bound by the rules and standards dictated in the Army field manual, or service equivalent. William Taft IV, a former legal advisor to the U.S. Department of State, explains, "The law does ban certain coercive techniques, and the Army field manual has over the years established the use of certain methods of interrogation that do not come to the level of coercion."⁸ The techniques that Mr. Taft is referring to are the different approaches an interrogator can take when questioning a detainee. The purpose of the approach phase of the interrogation is to make the detainee more receptive to sharing information. As outlined in

⁷Fleet Marine Field Manual (FMFM) 3-22-2, *Interrogator-Translator Platoon* (Quantico, VA: Marine Corps Combat Development Command, September 1991), 3-2.

⁸Woodrow Wilson International Center for Scholars, *Legal Standards and the Interrogation in the War on Terror* (Washington, DC: Woodrow Wilson International Center for Scholars, December 2007).

the FMFM 3-33-2, the approach phase begins with initial contact between the detainee and the interrogator. At this point, the interrogator must convince the captive that it is to his own advantage that he tell the truth, even though it may be an act of treason. When executed correctly, the interrogator will gain rapport with the detainee and will likely receive the required information. The FMFM 3-22-2 lists 17 different approach techniques an interrogator can use. Some of the approach techniques include the incentive, emotional love/hate, and the "we know all approach."

In 2005 Congress approved the Detainee Treatment Act (DTA). One of the most important amendments in the DTA is that all personnel must adhere to the guidelines stated in the Army Field Manual (or service equivalent) while interrogating detainees. Michael John Garcia, a legislative attorney, writes in a Congressional Research Service Report that the "DTA provides that no person in the custody or effective control of the DOD or detained in a DOD facility shall be subject to any interrogation treatment or technique that is not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation."⁹ The second amendment of the DTA explains that non-DOD agencies, such as the Central Intelligence Agency (CIA), are not required to adhere to the rules and regulations laid out

⁹ CRS Report for Congress, Order Code RL33655, CRS-2

in the Army Field Manual when conducting interrogations.

Therefore non-DOD U.S. Intelligence agencies have access to interrogation techniques not found in the Army Field Manual.

Amrit Singh, an attorney with the ACLU, explains that intelligence agency interrogation techniques closely mirror the methods found at SERE (survival, evasion, resistance, and escape) school. Some of the techniques used at SERE may include water boarding, a technique that simulates drowning, and close confinement procedures.¹⁰ However, SERE school training is designed to help inoculate U.S. personnel to coercive and psychological methods of exploitation, not to train them in the use of these techniques. As stated in DOD directive 3115.09, the "use of SERE techniques against a person in the custody or effective control of the Department of Defense or detained in a DOD facility is prohibited."¹¹ Nevertheless, one thing is clear -- no such directive binds non-DOD intelligence agencies to the same standard.

PROPOSED STANDARDS AND TACTICS, TECHNIQUES, AND PROCEDURES

The horrific images that emanated from Abu Ghraib prison in 2004 prompted the DOD and civilian law makers to take quick action to ensure no further cases of detainee abuse. The

¹⁰ Woodrow Wilson International Center for Scholars: Legal Standards and the Interrogation of Prisoners in the War on Terror, part II, p.19

¹¹ DOD Directive, Number 3115.09, p.3

Detainee Treatment Act of 2005 and DOD Directive 3115.09 set the requirement for humane treatment during all intelligence interrogations. While U.S. policy makers have enacted legislation to restrict the limits of DOD interrogation methods, no such restrictions have been levied against non-DOD intelligence agencies. On March 8, 2008, President Bush used his veto power to halt a congressional effort to limit the Central Intelligence Agency's autonomy/authority to subject detainees to harsh interrogation techniques. The bill would have explicitly barred any government agencies from using harsh interrogation methods, such as water boarding and sensory deprivation techniques. The Director of the Central Intelligence Agency, Michael Hayden, defended the President's policy by stating that the Army Field Manual did not "exhaust the universe of lawful interrogation techniques."¹²

As the Obama administration is poised to take over the White House in January, many law makers and military leaders are hopeful that action will be taken to rein in non-DOD intelligence agencies. On December 3, 2008, President-elect Barack Obama's top legal advisors met with many prominent retired generals to discuss overturning some of the previous administration's policies concerning interrogations. An article in the Associated Press explains that "the generals would like

¹² Steven Lee Myers, "Veto of Bill on CIA Tactics Affirms Bush's Legacy." New York Times, 9 March 2008, A1.

to see authority rescinded for the CIA to use harsh interrogation methods that go beyond those approved by the military."¹³ Many prominent military leaders currently serving in the Global War on Terrorism, including General David Petraeus, have expressed concern over the use of interrogation methods not found in the Army Field Manual because of the potential repercussions for future U.S. prisoners of war.¹⁴ Lawmakers and prominent military leaders will continue to urge the new administration to adopt a policy that binds all DOD and federal agencies to a single standard regarding the limits of interrogation. The proposed standard is to use the Army Field Manual as the single source of authority to govern the tactics, techniques, and procedures used in all interrogations sanctioned by the U.S. Government.

COUNTER-ARGUMENT

There are those that believe that if hash interrogation practices can save a single American life, then the ends justify the means. In response to this opposing view the following considerations must be weighed:

1. Negative propaganda against the U.S.
2. U.S. loss of the moral high ground

¹³ Hess. "Obama Team."

¹⁴ Myers. "Veto of". A1

3. Severe repercussions against Americans captured in war

The long term reputation of the United States and the safety of its military personal are far more important than the intelligence gained from harsh interrogations. As the philosopher Plato states, "he who commits injustice is ever made more wretched then he who suffers it."

CONCLUSION

The U.S. has signed international treaties and enacted domestic laws that obligate the country to treat prisoners of war and other detainees in a just and fair manner. More importantly, the United States has a proud tradition of retaining the moral high ground in its treatment of prisoners of war. Thomas Ricks writes in his book Fiasco, General George Washington "often reminded his men that they were an army of liberty and freedom, and that the rights of humanity for which they were fighting should extend even towards its enemies."¹⁵

The use of harsh interrogation methods by non-DOD intelligence agencies may actually increase the incidence of attacks in the U.S. Having no clear policy is akin to village justice. Each person, each entity, each country has a different standard, thereby, wreaking havoc among all. Enemies are quick to capitalize on the inconsistencies prevalent in U.S.

¹⁵ Thomas E. Ricks, *Fiasco* (New York: The Penguin Press, 2006), 197.

interrogation policy, stating that America lacks moral integrity.

To counter the enemy's information operations, the U.S. government should adopt one federal standard that establishes the boundaries of interrogation operations. Lawmakers and military leaders have advocated that the Army Field Manual should govern, as it defines the exact methods and procedures permitted when questioning detainees. Once the U.S. has adopted these consistent, non-subjective standards of interrogation, it will be a stronger and cohesive force both internally and externally.

Word Count: 2091

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